IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 18TH JULY 2007 / 27TH ASHADHA 1929

Bail Appl..No. 4255 of 2007()

CRIME NO.325/07 OF VALAPATTANAM POLICE STATION

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PETITIONER: ACCUSED:

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1. E.KARUNAKARAN NAIR, S/O.CHINDAN NAIR,
   AGED 69 YEARS, KAITHALA HOUSE, AYIKKAI, P.O.AROLI,
   PAPPINISSERY, KANNUR DISTRICT.

2. K.I.V.VINAYAKUMAR, S/O.KARUNAKARAN NAIR,
   AGED 26 YEARS, KAITHALA HOUSE, AYIKKAI, P.O.AROLI,
   PAPPINISSERY, KANNUR DISTRICT.

BY ADV. SRI.P.U.SHAILAJAN

RESPONDENTS: COMPLAINANT:

STATE OF KERALA REPRESENTED BY STATION
HOUSE OFFICER, VALAPPATTANAM POLICE STATION,
THROUGH PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORGE.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 18/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

B.A. NO. 4255 OF 2007

Dated this the 18th day of July, 2007

ORDER

Application for anticipatory bail. The petitioners face allegations under Sec.3 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. The crux of the allegations is that the water source of the de facto complainant, a member belonging to the Scheduled Caste, is polluted by the conduct of the petitioners who do not belong to any Scheduled Caste. A crime has been registered. Investigation is in progress. The petitioners apprehend imminent arrest.

2. The learned counsel for the petitioners submits that the petitioners are absolutely innocent and that the disputes have now been settled between the parties. It is, in these circumstances, prayed that directions under Sec.438 of the Cr.P.C. may be issued.

3. In the light of Sec.18 of the of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act there is a clear bar against entertainment of an application for anticipatory bail at the moment. With the inputs presently available, I am unable to agree that there is no allegation which can be said to fall within the sweep of Sec.3 of the Scheduled Castes/ Scheduled Tribes (Prevention of Atrocities) Act. I am satisfied, in these circumstances, that this is a fit case where the petitioners must appear before the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course. The mere fact that the offence under Sec.3 of the Act is triable by a Special Sessions Court is no reason for the learned Magistrate to abdicate the jurisdiction under Sec.431 of the Cr.P.C. The position has been made crystal clear in the decisions reported in **Ali v. State of Kerala (**2000 (2) K.L.T. 280); **Shanu v. State of Kerala** (2000 (3) K.L.T. 452); **Krishnakumar v. State of Kerala** (2005 (1) K.L.D. (Cri) 42 and **P.P. Kader v. State of Kerala** (2005 (1) K.L.D. (Cri) 250).

4. In the result, this bail application is dismissed; but with the observation that if the petitioners surrender before the learned Magistrate and seek bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned

Magistrate must proceed to pass appropriate orders on merits and expeditiously – on the date of surrender itself.

Sd/-

(R. BASANT, JUDGE)

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P.S. to Judge